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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,973	02/04/2004	Steven C. Shanks	206-024	5207
33354 7590 07/02/2007 ETHERTON LAW GROUP, LLC 5555 E. VAN BUREN STREET, SUITE 100 PHOENIX, AZ 85008				
			EXAMINER JOHNSON III, HENRY M	
			ART UNIT 3739	PAPER NUMBER
			MAIL DATE 07/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,973

Applicant(s)

SHANKS ET AL.

Examiner

Henry M. Johnson, III

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 10 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 10 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 16, 2007 has been entered.

Response to Arguments

Applicant's arguments filed May 16, 2007 have been fully considered but they are not persuasive. Yayama teaches non-intersecting beams as shown in Figure 3. The propagation below the tissue surface is dependent on absorption and scattering effectively disrupting the light that it can no longer be considered a beam. Clearly, the optical system of Yayama is capable of producing intersecting (Fig. 2) or non-intersecting (Fig. 3) beams.

The intended use of an apparatus has limited patentable weight. However, if such use yields an unexpected result due to device structure, it is evaluated. The Applicant discloses no criticality, benefit or unexpected result due to the beams not intersecting. The only discussion in the specification regarding intersecting beam regards the "laser beams have substantially similar spot shapes and are co-incident where they impinge the patient's skin", thus teaching intersecting beams.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3739

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4, 10 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,582,454 to Yayama in view of U.S. Patent 6,267,779 to Gerdes. Yayama teaches a device for treating the parasympathetic nervous system using blue, green and red lasers (Col. 4, lines 9-15), independently controlled by a drive control unit (Fig. 2, # 2). The laser power is from 1 to 5 mW and pulse rates from a few Hz to 1KHz. The beams may be arbitrarily adjusted by independent optics (Fig. 3, #s 31, 32 & 33) implying simultaneous operation (Col. 5, lines 12-24). The optics may produce intersecting beams (Fig. 2) or non-intersecting beams (Fig. 3). Optics are provided for each beam to condense the beams (Col. 4, lines 17-18), such condensing being interpreted as shaping the beam. The optics may vary the width of the beams (Col. 5, lines 25-30). Yayama teaches prior art probes with internal sources (Fig. 1A), thus inherently teaching the sources are in the hand-held probe. Yayama teaches a probe that is pushed against the tissue surface for treatment (Col. 6, lines 1-6), this interpreted as being freely movable by an operator. Yayama does not teach different spot shapes. Gerdes discloses an apparatus for therapeutic laser treatment that includes handheld wands (Fig. 7) that each may deliver two wavelengths of laser energy. The beams are combined and delivered to the wands, which include adjustable optics to focus and shape the beams (Col. 8,

Art Unit: 3739

lines 31-34). The beam shape may be circular or rectangular (Col. 9, line 49), or a variety of other patterns. The rectangular shape is interpreted as a linear shape by assigning a minimal value to the "Y" dimension. A controller for the sources is disclosed that may control the pulse parameters, including, continuous or pulsed, pulse duty cycle and duration of application for each of the radiation sources synchronously or independently with continuous operation possible by selection of a duty cycle of 100 percent (Col. 11, lines 3-8). Specifically mentioned is a pulse frequency of one hertz (Col. 11, line 63). It would have been obvious to one skilled in the art to use optics to produce various beam shapes as taught by Gerdes in the invention of Yayama as such optics are well known in the art and both Gerdes and Yayama suggest varying the beam for specific treatments. It is noted, that while specific spot shapes are cited, no criticality is associated with any specific shape. The limitation of "non-intersecting beams" is not disclosed by the Applicant as critical. The Applicant positively teaches intersecting beams (paragraph 0023), while only a figure relates to non-intersecting beams. With no unexpected results or benefits associated with either, whether the beams intersect or not is not critical in the device structure.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

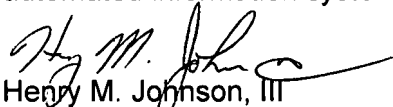
Art Unit: 3739

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Henry M. Johnson, III
Primary Examiner
Art Unit 3739